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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 95-116
Telephone Number Portability) RM 8535

**KMC TELECOM INC.'S REPLY
TO OPPOSITIONS FOR FURTHER RECONSIDERATION**

KMC Telecom Inc. ("KMC"), by its undersigned counsel, hereby replies to the oppositions to its Petition For Further Reconsideration of the Commission's First Memorandum and Order on Reconsideration ("Reconsideration Order") in the above-captioned docket filed by the United States Telephone Association ("USTA"), U.S. West, Inc., Ameritech, Bell Atlantic and NYNEX (collectively the "LECs"). In the Reconsideration Order, the Commission revised the implementation schedule for number portability in the top 100 MSAs in a manner that creates the potential for excess vendor capacity that could be utilized to accelerate the deployment of number portability in markets outside the 100 largest MSAs. To the extent that such excess vendor capacity does in fact develop and accelerated deployment of number portability in smaller markets is otherwise technically feasible, there is absolutely no reason to delay such deployment in areas where a competing carrier is ready to provide service. Indeed, to do so would be contrary to the mandate of Section 252(b)(2) of the Telecommunications Act of 1996. The LECs' have presented no valid reasons for the denial of KMC's Petition For Further Reconsideration.

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The Commission Should Adopt KMC's Proposal

Congress has directed that all local exchange carriers must "provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission." *See* Section 251(b)(2) of the Act. Congress also has expressly decreed that consumers in all regions of the country should have access to telecommunications services "reasonably comparable those provided in urban areas." *See* Section 254(b)(3) of the Act. The availability of number portability in all areas where competitive service providers are operating is critical to the effectuation of these policy directives. Accordingly, the Commission's rules should not artificially forestall the deployment of number portability in smaller markets when such deployment could be accomplished prior to June 1999.

The Commission's original implementation schedule required LECs to deploy number portability in all switches in the top 100 MSAs by December 31, 1998. *First Report and Order* (released July 2, 1996) at ¶77. In establishing this schedule, the Commission relied upon the representations of the major switch vendors relating to the timing of the availability of the necessary software and their ability to install the software in the switches of the local exchange carriers. *Id.* at ¶¶77-78. The Commission's decision to target the top 100 MSAs initially was premised on the assumption that competing carriers would enter the larger markets first. Its decision on reconsideration to require deployment of number portability only in those switches for which a specific request is made was based on the pragmatic recognition that LECs should be able "to target their resources where number portability is needed and avoid expenditures in areas within an MSA in which competitors are not currently interested." *Reconsideration Order* at ¶59.

For areas beyond the 100 largest MSAs, the Commission concluded that the actual pace of competitive entry into local markets should determine the need for service provider portability.

First Report and Order at ¶82.

KMC's proposal is consistent with these basic premises. The Commission acknowledged that number portability is needed wherever there is competition. If competition develops in certain markets outside the top 100 MSAs before it develops in all areas within the top 100 MSAs, there is no sound basis for delaying the deployment of number portability in the smaller markets until June 1999. Where vendors can accommodate requests to update switch software in the smaller MSAs prior to the Commission's existing deadlines, number portability should be made available in those smaller markets as the development of competition dictates.

KMC's Petition For Reconsideration Complies With The Commission's Rules

USTA, NYNEX-BellAtlantic and US West argue that KMC's Petition should be dismissed on procedural grounds because it is repetitious and does not seek reconsideration of the modifications made to the First Report and Order. (USTA Opp. at 4-5; US West Opp. 2-3; NYNEX-Bell Atlantic Opp. at 3.) The LECs are incorrect. KMC's Petition complies with Section 1.429(i) of the Commission's Rules and properly seeks reconsideration of the Commission's modification of the number portability implementation schedule. KMC's proposal would add needed flexibility to the implementation schedule. Under KMC's proposal, smaller markets would enjoy the benefits of number portability on an accelerated basis where vendors can satisfy demands to supply and install the necessary software in switches serving those areas without jeopardizing the scheduled deployment of number portability in the top 100 MSAs.

Section 1.429(i) provides in pertinent part that “any order disposing of a petition for reconsideration which modifies rules adopted by the original order is to the extent of such modifications, subject to reconsideration in the same manner as the original order.” In the First Report and Order, the Commission adopted Section 52.23, which required local exchange carriers to deploy number portability in all switches in the top 100 MSAs over a period of 15 months, concluding on December 31, 1998. In the Reconsideration Order, the Commission modified Section 52.23 to require the deployment of number portability only in those switches in the top 100 MSAs for which another carrier has made a specific request at least nine months prior to the deployment deadline for the MSA. The rule was modified to ensure that carrier resources were devoted to implementing number portability in areas where competition actually exists, rather than needlessly expended in areas where there is no competition or demand for number portability. Reconsideration Order at ¶59.

The availability of switch software was the Commission’s primary consideration in establishing the original implementation schedule. First Report and Order at ¶¶77-78. On reconsideration, the Commission left in tact the original 15-month period for phased implementation in the top 100 MSAs and left untouched the estimate, on which it had initially relied, of vendor capability to make available and install the necessary software. As KMC demonstrated in its Petition, the modification to Section 52.23 creates the potential for vendor capacity that may go unused if requests are not submitted for all switches in the top 100 MSAs within the prescribed deadlines. KMC has proposed a mechanism for utilizing this excess capacity, if it develops, to accelerate the deployment of number portability in smaller markets. Contrary to the assertions of the LECs, this issue was not addressed by the Commission in its Order on reconsideration.

**Number Portability Should Be Deployed As Soon As
Technically Feasible Wherever There Is Competition**

The LECs' substantive objections to KMC's proposal are not well-founded. US West, NYNEX, Bell Atlantic and USTA all contend that reconsideration should be denied because KMC has not demonstrated that excess vendor capacity will in fact result from the Commission's revised implementation schedule. (US West Opp. at 6-8; NYNEX-Bell Atlantic Opp. at 5; USTA at 6.) Reconsideration should not be denied on this basis. It would, of course, be impossible for KMC to make such a showing in advance of the deadlines for carriers to submit switch-specific requests for deployment of number portability. Such a showing is not necessary in any event, however, because KMC's proposal would not be triggered unless excess capacity does in fact develop. If it turns out that vendors are willing and able to accommodate requests for number portability in switches located outside the top 100 MSAs prior to the end of 1998, the Commission's rules should require that LECs utilize that capacity so that number portability can be deployed where it is needed. Such a requirement would be consistent with the Commission's determination that the actual pace of competitive entry should dictate the need for number portability in the smaller markets.

The LECs also complain that software availability is not the only factor to be considered in determining the timing of number portability implementation. They contend that they will need additional time to accomplish other necessary network upgrades, including operations support system ("OSS") modifications, switch processor upgrades, installation of signal transfer points ("STPs") and signal control points ("SCPs") and signaling link augmentation. (Ameritech Opp. at 3-4; US West at 8-10). The Commission already has considered and rejected similar arguments put forth by the incumbent LECs in petitions for reconsideration of the First Report

and Order. The Commission concluded that ample time to perform the necessary upgrades and modifications is built into the implementation schedule. Reconsideration Order at ¶89.¹ The LECs have offered no reason for the Commission to alter its conclusion.

It is certainly possible that in some cases the need to perform network upgrades or modifications may preclude a LEC from meeting the deadline, despite the availability of the necessary vendor software. In those circumstances, the LEC may request a waiver pursuant to Section 52.23(e) of the Commission's rules. When such upgrades and modifications have already been performed or could be performed prior to the deadline, however, there is no reason to delay implementation of number portability in smaller markets where competitors are actually operating. Revising the rules to recognize and allow exploitation of this potential, should it develop, would further the goal of ensuring that number portability is made available in all regions of the country where competing providers are offering alternative services.

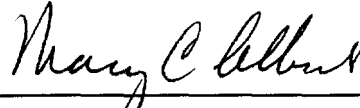
Conclusion

For the foregoing reasons and those stated in its Petition for Reconsideration, KMC respectfully requests that the Commission grant reconsideration of the number portability implementation schedule. Adoption of KMC's proposal will build flexibility into the Commission's rules by allowing for the utilization of any excess vendor capacity to bring the

¹ The Commission correctly found that State regulators and industry representatives have been studying how to handle such deployment-related issues for over three years. Reconsideration Order at ¶89.

full benefits of competition sooner to all areas of the country. The LECs' objections to KMC's Petition should be denied.

Respectfully submitted,



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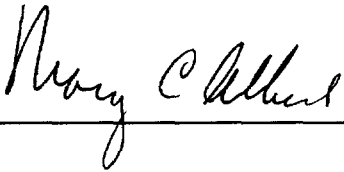
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June 23, 1997

Certificate of Service

I hereby certify that copies of the foregoing KMC TELECOM INC.'S REPLY TO OPPOSITIONS TO PETITION FOR FURTHER RECONSIDERATION in Docket No. 95-116 were served this 23rd day of June, 1997, by first class mail, postage prepaid, to each of the parties on the attached service list. (Those served by hand delivery are marked with an asterisk (*).)



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